

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO

06 JUL 11 PM 3:52

JA

CLERK-ALBUQUERQUE

BENJAMIN RADFORD,

Plaintiff,

vs.

No.

LARRY BOTTOMS, WAL-MART
TRANSPORTATION, LLC, and
AMERICAN HOME ASSURANCE, INC.

CIV - 06 - 0623

ACT RHS

Defendants.

**NOTICE OF REMOVAL TO THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

COMES NOW the Defendant, Wal-Mart Transportation, LLC ("Defendant"), by and through its attorneys of record, Butt Thornton & Bachr PC, and respectfully petition the Court, pursuant to 28 U.S.C. §1332 and 28 U.S.C. §1441, for the removal of this action from the Second Judicial District Court of Bernalillo County, State of New Mexico, to the United States District Court for the District of New Mexico on the following grounds:

1. Plaintiff filed this civil action against Defendants in the Second Judicial District Court, County of Bernalillo, State of New Mexico. Pursuant to D.N.M. LR-CIV 81.1, copies of the Summons and Complaint are attached hereto.

2. According to the Complaint filed June 21, 2006, Plaintiff is a resident of the state of Tennessee. Upon information and belief, Plaintiff is also a citizen of the Tennessee. See Complaint at ¶1.

3. Defendant Larry Bottoms is a resident of the state of Nevada.

4. Defendant Wal-Mart, Inc. is a Delaware corporation authorized to do business in the state of New Mexico.

5. Defendant American Home Assurance is a foreign corporation. authorized to do business in New Mexico.

6. Complete diversity of citizenship exists between Plaintiff and Defendants.

7. The Complaint contains allegations for damages for property damage, personal injuries, pain and suffering, permanent physical disability, loss of enjoyment of life, past and future lost wages, past and future medical treatment and associated expenses. See Complaint at ¶9.

8. By letters dated November 14, 2005 and January 23, 2006, Defendant was placed on notice that Plaintiff seeks damages far in excess of \$75,000.00.

9. Although Defendant does not admit that Plaintiff has been damaged in any amount as the result of the actions of Defendants, the amount in controversy exceeds \$75,000.00.

10. Plaintiff's Complaint is a civil action over which this Court has jurisdiction pursuant to 28 U.S.C. §1332 and which is removable by Defendant under the provisions of 28 U.S.C. §1441 in that:

a. The matter in controversy exceeds the sum or value of \$75,000. exclusive of interest and costs; and

b. The matter in controversy is between citizens of different states.

11. This Notice of Removal is filed with this Court within thirty (30) days after receipt of Plaintiff's Complaint.

12. Defendant, immediately upon the filing of this Notice of Removal, gave written notice of the filing as required by 28 U.S.C. §1446 (D) and filed a copy thereof with the

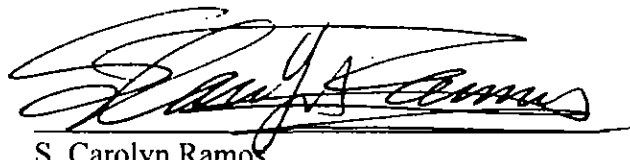
Clerk of the Second Judicial District Court, County of Bernalillo, State of New Mexico, the Court from which this action is removed.

13. This Notice of Removal is signed pursuant to Fed. R. Civ. P. 11.

WHEREFORE, the Defendant, Wal-Mart Transportation, LLC requests that the above-entitled action be removed from the Second Judicial District Court, County of Bernalillo, State of New Mexico, to this United States District Court for the District of New Mexico.

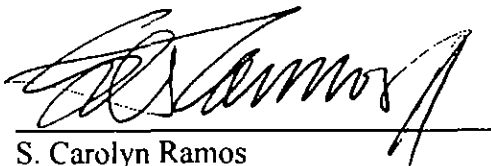
Respectfully,

BUTT THORNTON & BAEHR PC



S. Carolyn Ramos
Attorneys for Defendant Wal-Mart Transportation, LLC.
P.O. Box 3170
Albuquerque, NM 87190-3170
Telephone: (505) 884-0777
Facsimile: (505) 889-8870

I hereby certify that I have mailed a true copy of the foregoing pleading to all counsel of record this 11th day of July, 2006.



S. Carolyn Ramos

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

CV-2006-04882

No. CV 2006-

BENJAMIN RADFORD,

Plaintiff,

vs.

LARRY BOTTOMS, WAL-MART TRANSPORTATION, LLC,
and AMERICAN HOME ASSURANCE, INC.,

Defendants.

SUMMONS

TO: WAL-MART TRANSPORTATION, LLC

Defendant(s), Greetings:

You are hereby directed to serve a pleading or motion in response to the Complaint within 30 days after service of the Summons, and file the same, all as provided by law.

You are notified that, unless you so serve and file a responsive pleading or motion, the Plaintiff(s) will apply to the Court for the relief demanded in the Complaint.

Attorney or Attorneys for Plaintiff:

Shapiro Bettinger Chase LLP
Carl Bettinger
4273 Montgomery Blvd. NE, 110-E
Albuquerque, NM 87109
(505) 888-6463

John Zelbst
411 Southwest 6th Street
Lawton, Oklahoma 73501-4614
(580) 248-4844

WITNESS the Honorable WILLIAM F. LANG District Judge of
said Court of the State of New Mexico and the Seal of the District Court of
said County, this _____ day of JUN 21 2006 2006.


**If you want the advice of a lawyer and don't know one, you may
wish to call: The State Bar Statewide Lawyer Referral Service at
842-6132**

JUANITA M. DURAN
CLERK OF DISTRICT COURT

(SEAL)

By: _____

Deputy



NOTE: This summons does not require you to see, telephone or write to the
District Judge of the Court at this time.

It does require you or your attorney to file your legal defense to this
case in writing with the Clerk of the District Court within 30 days after the
summons is legally served on you. If you do not do this, the party suing may
get a Judgment by default against you.

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

CV-2006 04867

No. CV 2006-

BENJAMIN RADFORD,

Plaintiff,

vs.

LARRY BOTTOMS, WAL-MART TRANSPORTATION, LLC,
and AMERICAN HOME ASSURANCE, INC.,

Defendants.

ENDORSED
FILED IN MY OFFICE THIS

JUN 21 2006

Quanita M. Duran
CLERK DISTRICT COURT

COMMERCIAL TRUCK MAREZ

COMPLAINT FOR NEGLIGENCE RESULTING IN
PERSONAL INJURY

Plaintiff states:

1. Plaintiff Benjamin Radford (Radford) is a resident of Rockwood, Tennessee.
2. Wal-Mart, Transportation LLC (Wal-Mart) is a for-profit limited liability company that regularly does business in the State of New Mexico.
3. Based on information and belief, Bottoms is a resident of the State of Nevada.
4. At all times material to this Complaint, Bottoms was an employee of Wal-Mart, acting within the course and scope of his employment as a commercial truck driver.
5. Based upon information and belief, American Home Assurance is a foreign for-profit corporation, licensed to do business in the State of New Mexico. In this matter, American Home Assurance provided liability insurance coverage to Bottoms and Wal-Mart Transportation.

6. The acts and omissions complained of herein occurred in Bernalillo County, New Mexico.

7. On the morning of September 26, 2003, while Bottoms was operating his commercial tractor trailer, and while in the course and scope of his employment by Wal-Mart, he failed to exercise ordinary care and was negligent. His negligence included, but was not limited to: failing to keep a proper look-out, inattention, traveling at a rate of speed that was unsafe for conditions, failing to remain alert and attentive, and failing to keep a proper look-out for other traffic on the roadway.

8. In addition, Bottoms operated his motor vehicle in violation of one or more statutes or regulations, including but not limited to, *Following too closely* §66-7-318 NMSA, *Careless driving* §66-8-114 NMSA and *Reckless driving* statute §66-8-113, which constitutes negligence *per se*.

9. As a proximate result of Bottoms' negligence, Bottoms' truck collided with that driven by Radford, causing property damage, causing Radford to sustain personal injuries, pain and suffering, permanent physical disability, loss of enjoyment of life, past and future lost wages, medical treatment and associated expenses that would not otherwise have been incurred, and the need for future medical care.

10. Wal-Mart, as the employer of Bottoms, is liable for any and all damages that resulted from Bottoms' negligence.

WHEREFORE Plaintiff requests compensatory damages against the Defendants in an amount to be proven at trial, pre- and post-judgment interest, and such other and further relief as permitted by law.

SHAPIRO BETTINGER CHASE LLP
4273 Montgomery Blvd., NE, #110-East
Albuquerque, New Mexico 87109
(505) 888-6463

-And-

John Zelbst
411 Southwest 6th Street
Lawton, Oklahoma 73501-4614
(580) 248-4844

Attorneys for Plaintiffs

By: 

CARL BETTINGER